

NTSB Order No. EA-4440

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of March, 1996

Docket SE-14096

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on October 10, 1995, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 91.123(b) and 91.13(a).² The

²Section 91.123(b) provided:

law judge waived the Administrator's 30-day proposed suspension of respondent's commercial pilot certificate, as respondent had filed a timely NASA report. We deny the appeal.

The Administrator's complaint stemmed from a landing into Burbank, CA airport by respondent (as flight instructor) and a student pilot.³ The law judge found that respondent was issued an instruction to land a Cessna 172 on runway 8 and thereafter to hold short of intersecting runway 15. According to the transcript of the conversation between air traffic control (ATC) and respondent (and admitted by respondent, see Tr. at 85), both respondent and his student answered the controller's instruction with "one two two roger" (122 being the last three digits of the aircraft's number). Respondent testified that he had not heard that part of the clearance directing him to hold short after landing. The controller testified further that, as the aircraft came over the runway, it was high and fast. Concerned that respondent would not hold short and, possibly, that he might need to execute a go-around, the controller asked respondent to verify

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(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

Section 91.13(a) reads:

(a) Aircraft operations for the purpose of air navigation.
No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

The Administrator's order charged that respondent was careless.

³Respondent was instructing on instrument procedures. The student had a private pilot certificate.

that he would hold short of runway 15. Respondent admitted hearing that instruction (Tr. at 86-87), and again answered "one two two." Exhibit J-1.⁴ He testified that he was unable to respond otherwise to the controller, being occupied with landing at the time.

Respondent, who landed the aircraft (Tr. at 88), failed to hold short of the runway. A United Airlines 737 passenger-carrying flight, taking off on intersecting runway 15 at the same time the Cessna was landing on runway 8, avoided the Cessna only by drastically increasing the angle of its ascent.⁵

At the hearing, respondent offered a number of affirmative defenses, all of which were rejected by the law judge.

Respondent raises two of them on appeal.

Respondent argues that various requirements for simultaneous use of intersecting runways were not followed by the controller in this instance. These requirements have to do with length of runway, aircraft involved, and wind direction. Initially, we note that we fail to see why in this case, even if we assume that these requirements applied and were not met, we should excuse respondent's failure to abide by a clearance.⁶

⁴Respondent also testified that he did not tell an FAA inspector investigating the incident that he could not hold short. This contradicted testimony from the inspector and a concurrent memo of a phone conversation to this effect. Exhibit C-2; Tr. at 71.

⁵The controller's takeoff clearance to the 737 was audible to respondent (see Exhibit J-1 and Tr. at 87), but respondent testified that he had not heard it.

⁶For example, respondent did not testify that he knew of any

Regardless, the Administrator has demonstrated, and the law judge properly found, that respondent failed to show that applicable requirements were violated. Respondent failed to rebut the Administrator's evidence that one referenced document (the Airport Facility Directory) did not direct ATC activity, but was information for pilots. The controller also testified, unrebutted, that Burbank was approved for simultaneous operations on intersecting runways, and his supervisor testified, unrebutted, that the controller acted correctly.⁷

In this same vein, respondent also argues that the Airman's Information Manual required that controllers obtain acknowledgments from both pilots. Yet again, that publication is not a governing document for the controller, but information for pilots. Tr. at 41. Moreover, acknowledgments were obtained.

Respondent's argument that the Air Traffic Controller's Handbook required the controller to obtain readbacks, rather than simple acknowledgements, is respondent's best argument, but as the law judge found, this argument must fail because the readback requirement was not shown to have been in place when this

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of these requirements at the time or relied on them. Further, even if he knew for a certainty that simultaneous operations were not permitted at Burbank, this knowledge would not authorize respondent to ignore a hold short clearance.

⁷Indeed, the record supports a finding that the controller took prudent action in the circumstances by asking respondent to verify that he would hold short. Although respondent claims that this query came when he was touching down, the controller and his supervisor testified that the query was made when respondent still had time to land, holding short, or to make a safe go-around.

incident occurred. See Tr. at 26-27. Accordingly, these various publications do not establish any error on the part of the controller or any basis to reduce or dismiss the charges against respondent.

Second, respondent argues that he was not the pilot in command and, therefore, should not be held culpable for the violation. Respondent, however, admitted he was pilot in command in his answer to the complaint, the law judge specifically acknowledged that admission twice during the proceedings, and respondent at no time contested the law judge's statements or subsequent finding. Tr. at 5, 107, 113. He may not do so now.⁸

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁸We also agree with the Administrator that Administrator v. Strobel, NTSB Order EA-4384 (1995), is not on point and that the student's status and type of operation being performed does not affect that of respondent as flight instructor and pilot in command.